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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,709	12/08/2003	Alessandro Luigi Spadini	J6855(C)	3982
201 7590 11/01/2007 UNILEVER INTELLECTUAL PROPERTY GROUP 700 SYLVAN AVENUE, BLDG C2 SOUTH ENGLEWOOD CLIFFS, NJ 07632-3100			EXAMINER ROBERTS, LEZAH	
			ART UNIT 1614	PAPER NUMBER
			MAIL DATE 11/01/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/730,709

Applicant(s)

SPADINI ET AL.

Examiner

Lezah W. Roberts

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) 16, 19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

This Office Action is in response to the Amendment filed August 15, 2007. All previous rejections have been withdrawn unless stated below.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### **Status of claims**

Applicant has listed claims 10-11 as being withdrawn. Although this was the listed status in the previous set of claims, prosecution was extended to these claims because it was believed the claims were erroneously withdrawn due to the misinterpretation of the Restriction Requirement. This is still believed to be the case, therefore the status of the claims is as followed.

Claims 1-15 and 18 are pending.

Claims 16 and 19-20 are withdrawn.

Claim 17 is cancelled.

### ***Claims***

#### **Claim Rejections - 35 USC § 112-Indefiniteness (Previous Rejection)**

Claims 1-15 and 18 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The rejection is maintained.

Applicant's Arguments

Applicants submit that all claims with percentages (i.e., claims 1(e) and 4) list "% by wt."

Examiner's Response

The claims indicate a possibility of two different compositions or . It cannot be determined from the recitation of % by wt. if this percent is by total weight of the two compositions or by weight of each individual composition.

**Claim Rejections - 35 USC § 112- New Matter (New Rejection)**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-15 and 18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims recited the limitation "do not substantially react with water or each other until dispersed or dissolved in water at 25°C. Although the specification discloses, "do not substantially react with water or each other until dispersed or dissolved in water", it does not teach the temperature limitation in conjunction with this function. Therefore the limitation is new matter.

**Claim Rejections - 35 USC § 102 – Anticipation (Previous Rejection)**

1) Claims 1-4, 7, 10-11 and 13 were rejected under 35 U.S.C. 102(b) as being anticipated by Schmitt (3,866,800). The rejection is maintained.

**Applicant's Arguments**

Applicant has amended the claims to delete polymer as a limitation. The phrase "do not substantially react with water or each other until dispersed or dissolved in water at 25°C" has also been added to the independent claim 1. Applicant argues Schmitt does not disclose or suggest stabilizers contained in the dispersed phase selected from an organophilic particle, and amphipathic compound or a crystalline hydroxyl containing stabilizer and where the continuous phase is composed of a substantially anhydrous carrier.

**Examiner's Response**

The rejection is maintained because the claims recite amphipathic compound, which also encompasses an amphipathic polymer. Even if this was not the case, the surfactants such as sodium lauryl sulphate are also amphipathic compounds and are disclosed by the reference. Lefers et al. define Amphipathic as a compound containing both polar and non-polar regions<sup>1</sup>. The B component is anhydrous and therefore meets the limitations of the instant claims.

2) Claims 1, 12-13, 15 and 18 were rejected under 35 U.S.C. 102(b) as being anticipated by Murphy (US 5,585,093). The rejection is maintained.

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Applicant's Arguments

Applicant argues considering the reference of Murphy, one of skill in the art would be motivated to produce a composition with a three phase structure i.e., dispersed particles (phase 1) surrounded by a polymer capsule (phase 2) where the encapsulated particles are dispersed or suspended in a liquid, semi-solid or solid organic matrix (phase 3). See col. 4, lines 24-36. It is respectfully submitted therefore that Murphy fails to anticipate or suggest the inventive two phase structure. This argument is not persuasive.

Examiner's Response

The reference is subject to interpretation when determining the different phases. It could be considered that because the polymer is encapsulating the bicarbonate that the polymer is a part of the bicarbonate particle creating one phase, which may be considered the dispersion phase as set forth by the instant claims. Even if it was interpreted as Applicant has interpreted the compositions, there is no limitation in the claims that recites there are only two phases in the composition.

3) Claims 1, 9-10 and 13-15 were rejected under 35 U.S.C. 102(b) as being anticipated by Sine et al. (US 6,183,766). The rejection is maintained.

Applicant's Arguments

Applicant argues Sine et al., does not disclose or suggest a composition having a dispersed phase including a first component which is capable of chemically reacting

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<sup>1</sup> Lefers et al., Amphipathic, <http://www.biochem.northwestern.edu/holmgren/Glossary/Definitions/Def-A/amphipathic.html>, pages 1, July 2004.

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with a second component that is different from the first or with water at 25°C in an aqueous matrix as presently claimed.

Examiner's Response

In regards to the disperse phase, the addition of the wax particles, powders and bicarbonate salt would appear to make the composition a dispersion, particularly in the absence of water. In the case of a bicarbonate, which is the elected species, it is soluble in water and therefore it can be concluded when it is not in water it is in its powdered state. The claims recite an optional second component and therefore it may be interpreted that the second component does not have to be included. It may be concluded that the bicarbonate has the ability or is "capable" of chemically reacting with a second component that is different from it or with water at 25°C in an aqueous matrix as presently claimed. Seeing as a second component is not required by the claims, the compositions are encompassed by the reference because the bicarbonate is "capable" of reacting with a second compound.

**Claim Rejections - 35 USC § 103 – Obviousness (Previous Rejection)**

1) Claims 1-4, 7, 13 and 18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lentini et al. (US 6,177,092). The rejection is maintained.

Applicant's Arguments

Applicant argues the compositions of Lentini et al. are exemplified in the example in col. 8 and both components comprise water. It is submitted that Lentini fails to disclose a first component in a dispersed phase which is capable of chemically reacting with either water or a second component in an aqueous matrix. The reactive

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bicarbonate and pyrophosphate salt are soluble in the aqueous solution and therefore do not constitute a dispersed phase of a reactive material. This argument is not persuasive.

Examiner's Response

The reference suggests anhydrous compositions when it recites "In the case of an anhydrous product, water can be added to produce effervescent action or, the anhydrous product can be added to water. For example, the present invention may be in the form of a sachet containing the components of the system that is added to a bath of water" col. 3, lines 39-53. Water may be added when effervescence is desired. The compositions may be in different forms such as solutions, dispersion, emulsions and suspensions (col. 6, lines 57-61), which encompasses the instant claims.

2) Claims 10-11 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lentini et al. (US 6,177,092) in view of Gentile et al. (US 6,161,729). The rejection is maintained.

Applicant's Arguments

Applicant argues that a proper *prima facie* case of obviousness under 103(a) has not been made out with respect to claims 10 and 11 because they depend from claim 1 and Gentile et al., fail to remedy the deficiencies of Lentini, et al., with respect to claim 1 and its dependent claims. This argument is not persuasive.



Examiner's Response

Lentini et al. disclose a one or two part composition wherein the two components are kept separate before use. Gentile et al. remedy the deficiencies of Lentini et al. in respect to the instant claims by teaching a package suitable for two component systems with a valve encompassing that of the instant claims. Therefore it would have been obvious to have used the unit comprising the valves of Gentile for the compositions of Lentini.

3) Claims 5-6 and 8 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lentini et al. (US 6,177,092) in view of Hall et al. (US 5,316,054). The rejection is maintained.

Applicant's Arguments

Applicant argues that a proper *prima facie* case of obviousness under 103(a) has not been made out with respect to claims 5, 6 and 8 because they depend from claim 1 and Hall, et al., fails to remedy the deficiencies of Lentini, et al., with respect to claim 1 and its dependent claims. This argument is not persuasive.

Examiner's Response

Lentini et al. disclose a one or two part composition wherein the two components are kept separate before use. Hall et al. remedy the deficiencies of Lentini et al. in respect to the instant claims by teaching a package suitable for two component systems. Therefore it would have been obvious to have used the packages of Hall for the compositions of Lentini.

**Obvious-Type Double Patenting (Previous Rejection)**

Claims 1-15 and 18 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-1, 13, and 16-17 of copending Application No. 10/730,218 in view of Lentini et al. (US 6,177,092). The rejection is maintained.

**Applicant's Arguments**

Applicant argues if the provisional double patenting rejection is the only rejection remaining in the application, the examiner is respectfully requested to withdraw the rejection allowing the instant case to issue thereby converting the provisional double patenting rejection to a double patenting rejection for application no. 10/730,218. This argument is not persuasive.

**Examiner's Response**

The double patenting rejection is not the only remaining rejection and therefore the rejection stands.

Claims 1-15 and 18 are rejected.

Claims 16 and 19-20 are withdrawn.

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lezah W. Roberts whose telephone number is 571-272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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